IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 358 OF 2006

Manoj Chandulal Daru. ...Applicant
V/s.
The State of Maharashtra. ...Respondent

Shri Niranjan Mundargi for Applicant.
Ms.M.M. Deshmukh, APP for the State.

CORAM : V.M. KANADE, J.

DATED : MARCH 2, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. The applicant was arrested in connection with an offence which was registered initially by the Sakinaka Police Station which was transferred to G.B.C.B. CID, Mumbai, for investigation vide C.R.No.81/2005.

2. It is submitted by the learned Counsel for the applicant that he is the financial consultant and he has introduced the complainant to one Mr.Rodrigues who was a proprietor of A1-Jane Trading Company. Said Rodrigues

and his wife represented to the complainant that he would secure loan from a bank for an amount of Rs.70 crores. On this assurance given by the said Rodrigues, the complainant paid total amount of Rs.110 lakhs to the applicant herein and to the said Joseph Rodrigues and his wife. It is the case of the applicant that he received only Rs.11 lakhs out of the said amount which was towards his fees for providing financial advice to the complainant. He submitted that the chargesheet has now been filed and he has submitted that memorandum of understanding was executed between Joseph Rodrigues and his wife and the complainant in which Rodrigues has admitted having received the entire amount and had promised to repay the amount to the complainant. This document clearly indicate that he was not accused according to the complainant.

3. Learned APP, vehemently, opposed the said submission made by the learned Counsel for the applicant. It is submitted that there is sufficient documentary evidence on record to indicate that the applicant was part of the conspiracy in cheating the

complainant. She submitted that since the chargesheet has been filed, the applicant should approach the Sessions Court first.

4. I have given my anxious consideration to the submissions made by both the learned Counsel for the applicant and learned APP for the State. In the present case, the complaint was filed for the offences punishable under Sections 420, 465, 467, 468, 471, 120B, 406 of the IPC against the applicant and two other persons. The agreement which is executed between the complainant and Rodrigues does not disclose that any amount was paid to the complainant. Thus, otherwise the only role which attributed to the applicant is that of introducing Rodrigues to the complainant. While considering the application for bail, relevant factors which have to be taken into consideration are whether the applicant is likely to abscond, whether he is likely to tamper with the evidence and what is the gravity and seriousness of the offence. The application for bail should not be rejected as and by way of punishment to the applicant as it has to be remembered that the

applicant is presumed to be innocent unless he is proved guilty by the competent court of law and therefore, it is quite well settled that the accused need not be incarcerated indefinitely as under trial prisoner. Secondly, though Section 439 gives power to the Sessions Court and the High Court to grant bail, as a matter of convention, this practice is followed. Initially the applicant used to file application before the Sessions Court and if the application is not granted, the application is preferred in the High Court. In the present case, when the present application was filed, the chargesheet had not been filed and his earlier application before filing of the charge-sheet had been rejected by the Sessions Court. During the pendency of this Criminal Application, however, on 24th February, 2006, the chargesheet has been filed. Therefore, in my view, it would be unfair to ask the applicant to go back to the Sessions Court after this Court was seized of the matter and had heard and tried to entertain the application and therefore, this submission of the learned APP cannot be accepted.

5. Under the circumstances, in my view, this is a fit case for grant of bail. The applicant be released on bail in the sum of Rs.5000/- with one or two sureties in the like amount. The applicant shall report to the G.B.C.B. CID, Mumbai, once in a month.

. The application is disposed of.

(V.M. Kanade, J.)